

Japan Policy - Creation of Advisory Posts

Background and Overview

Many Japanese companies employ former senior executives in an advisory capacity, often for many years after they retire from their executive posts. The advisors typically receive compensation and benefits from the company, and continue to maintain an office there; however, unless the advisors remain on the board of directors, there is rarely any disclosure of their activities or their compensation, and they have no fiduciary duties to shareholders. The influence and lack of accountability of corporate advisors have attracted considerable attention in recent years, in particular in connection with the accounting scandal at Toshiba Corp., which employed a number of former executives in an advisory capacity.

Key Changes Under Consideration

There is not currently an ISS policy on the creation by companies of advisory posts, such as "sodanyaku" or "komon," which are held by former senior executives.

However, the proposed new policy will entail generally recommending against amendments to articles of incorporation to create new advisory positions such as "sodanyaku" or "komon," unless the advisors will serve on the board of directors and thus be accountable to shareholders.

Intent and Impact

Of Japanese companies covered by ISS in June 2016, 28 percent include provisions in their articles of incorporation relating to the appointment of senior advisors. It is expected that no more than a handful of companies will seek to add such provisions to their articles in any given year, so only a limited number of companies will be directly impacted by the proposed policy.

Nonetheless, the intent of this policy is to send a message to the market that shareholders are concerned that former senior executives could continue influencing companies in an advisory post, while it is difficult to hold them accountable. The presence of former senior executives as advisors makes it difficult for their successors to reverse course on their predecessors' strategic decisions, even when doing so would be good for the company. Furthermore, the continued employment of former executives by their "home companies" reduces the pool of available candidates to serve as outside directors at other firms, contributing to Japan's low level of board independence.

Request for Comment

- Should ISS recommend against amendments to articles of incorporation to create new advisory positions, unless the advisors will serve on the board of directors and thus be accountable to shareholders?
- Please add comments, if needed.